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8
 9 Attorneys for Plaintiffs,
 10 WARNER BROS. RECORDS INC.;
 11 SONY BMG MUSIC ENTERTAINMENT;
 12 UMG RECORDINGS, INC.; and
 13 ELEKTRA ENTERTAINMENT GROUP INC.

E-filing

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 DIVISION

13 WARNER BROS. RECORDS INC., a Delaware
 14 corporation; SONY BMG MUSIC
 15 ENTERTAINMENT, a Delaware general
 16 partnership; UMG RECORDINGS, INC., a
 17 Delaware corporation; and ELEKTRA
 18 ENTERTAINMENT GROUP INC., a Delaware
 19 corporation,

CASE NO.

CV 08

3997

20 COMPLAINT FOR COPYRIGHT
 21 INFRINGEMENT

22 Plaintiffs,

23 v.

24 JOHN DOE,

25 Defendant.

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JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).

3. Venue in this District is proper. See 28 U.S.C. §§ 1391(b), 1400(a). Although the true identity of Defendant is unknown to Plaintiffs at this time, on information and belief, Defendant may be found in this District and/or a substantial part of the acts of infringement complained of herein occurred in this District. On information and belief, personal jurisdiction in this District is proper because Defendant, without consent or permission of the copyright owner, disseminated over the Internet copyrighted works owned and/or controlled by Plaintiffs. On information and belief, such illegal dissemination occurred in every jurisdiction in the United States, including this one. In addition, Defendant contracted with an Internet Service Provider (“ISP”) found in this District to provide Defendant with the access to the Internet which facilitated Defendant’s infringing activities.

PARTIES

4. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

5. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership, with its principal place of business in the State of New York.

6. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

7. Plaintiff Elektra Entertainment Group Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

8. The true name and capacity of Defendant are unknown to Plaintiffs at this time. Defendant is known to Plaintiffs only by the Internet Protocol (“IP”) address assigned to Defendant by his or her ISP on the date and time of Defendant’s infringing activity. See Exhibit A. Plaintiffs

1 believe that information obtained in discovery will lead to the identification of Defendant's true
2 name.

3 **COUNT I**

4 **INFRINGEMENT OF COPYRIGHTS**

5 9. Plaintiffs incorporate herein by this reference each and every allegation contained in
6 each paragraph above.

7 10. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of
8 exclusive rights under United States copyright law with respect to certain copyrighted sound
9 recordings, including, but not limited to, all of the copyrighted sound recordings on Exhibit A to this
10 Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted
11 Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright
12 Registration issued by the Register of Copyrights to each Plaintiff as specified on each page of
13 Exhibit A.

14 11. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the
15 exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted
16 Recordings to the public.

17 12. Plaintiffs are informed and believe that Defendant, without the permission or consent
18 of Plaintiffs, has continuously used, and continues to use, an online media distribution system to
19 download and/or distribute to the public certain of the Copyrighted Recordings. Exhibit A identifies
20 the IP address with the date and time of capture and a list of copyrighted recordings that Defendant
21 has, without the permission or consent of Plaintiffs, downloaded and/or distributed to the public.
22 Through his or her continuous and ongoing acts of downloading and/or distributing to the public the
23 Copyrighted Recordings, Defendant has violated Plaintiffs' exclusive rights of reproduction and
24 distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and/or exclusive
25 rights under copyright. (In addition to the sound recordings listed on Exhibit A, Plaintiffs are
26 informed and believe Defendant has, without the permission or consent of Plaintiffs, continuously
27 downloaded and/or distributed to the public additional sound recordings owned by or exclusively
28 licensed to Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of

1 infringement are ongoing. Exhibit A includes the currently-known total number of audio files being
 2 distributed by Defendant.)

3 13. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on
 4 each respective album cover of each of the sound recordings identified in Exhibit A. These notices
 5 of copyright appeared on published copies of each of the sound recordings identified in Exhibit A.
 6 These published copies were widely available, and each of the published copies of the sound
 7 recordings identified in Exhibit A was accessible by Defendant.

8 14. Plaintiffs are informed and believe that the foregoing acts of infringement have been
 9 willful, intentional, and in disregard of and with indifference to the rights of Plaintiffs.

10 15. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights
 11 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) against
 12 Defendant for each infringement of each copyrighted recording. Plaintiffs further are entitled to
 13 their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

14 16. The conduct of Defendant is causing and, unless enjoined and restrained by this
 15 Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated
 16 or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502
 17 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing
 18 Plaintiffs' copyrights, and ordering that Defendant destroy all copies of copyrighted sound
 19 recordings made in violation of Plaintiffs' exclusive rights.

20 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

21 1. For an injunction providing:

22 "Defendant shall be and hereby is enjoined from directly or indirectly
 23 infringing Plaintiffs' rights under federal or state law in the
 24 Copyrighted Recordings and any sound recording, whether now in
 25 existence or later created, that is owned or controlled by Plaintiffs (or
 26 any parent, subsidiary, or affiliate record label of Plaintiffs)
 27 ("Plaintiffs' Recordings"), including without limitation by using the
 28 Internet or any online media distribution system to reproduce (*i.e.*,
 download) any of Plaintiffs' Recordings or to distribute (*i.e.*, upload)
 any of Plaintiffs' Recordings, except pursuant to a lawful license or
 with the express authority of Plaintiffs. Defendant also shall destroy
 all copies of Plaintiffs' Recordings that Defendant has downloaded
 onto any computer hard drive or server without Plaintiffs'
 authorization and shall destroy all copies of those downloaded

recordings transferred onto any physical medium or device in Defendant's possession, custody, or control."

2. For statutory damages for each infringement of each Copyrighted Recording pursuant to 17 U.S.C. § 504.

3. For Plaintiffs' costs in this action.

4. For Plaintiffs' reasonable attorneys' fees incurred herein.

5. For such other and further relief as the Court may deem just and proper.

Dated: August 21, 2008

HOLME ROBERTS & OWEN LLP

By DAWNIELL ZAVALA
DAWNIELL ZAVALA
Attorney for Plaintiffs
WARNER BROS. RECORDS INC.; SONY
BMG MUSIC ENTERTAINMENT; UMG
RECORDINGS, INC.; and ELEKTRA
ENTERTAINMENT GROUP INC.

1 **EXHIBIT A**2 **JOHN DOE**3 **IP Address:** 128.12.118.231 2008-01-24 00:02:32 EST4 **CASE ID#** 1566263825 **P2P Network:** GnutellaUS6 **Total Audio Files:** 1331

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Warner Bros. Records Inc.	Fleetwood Mac	Go Your Own Way	Rumours	N39857
SONY BMG MUSIC ENTERTAINMENT	Kansas	Dust In The Wind	Point Of Know Return	N46813
UMG Recordings, Inc.	Jodeci	Come and Talk to Me	Forever My Lady	129-912
UMG Recordings, Inc.	Whitesnake	Is This Love	Whitesnake	82-749
UMG Recordings, Inc.	DMX	Party Up	...And Then There Was X	279-017
Elektra Entertainment Group Inc.	Eagles	Take It to the Limit	One of These Nights	N28687
SONY BMG MUSIC ENTERTAINMENT	Lyfe Jennings	Hypothetically	Lyfe 268-192	363-168
SONY BMG MUSIC ENTERTAINMENT	Sade	By Your Side	Lovers Rock	298-354

28

 COMPLAINT FOR COPYRIGHT INFRINGEMENT

Case No. _____

#39515 v1

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I. (a) PLAINTIFFS

WARNER BROS. RECORDS INC.; SONY BMG MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; and ELEKTRA ENTERTAINMENT GROUP INC.
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
Los Angeles County, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT

JOHN DOE

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
HOLME ROBERTS & OWEN LLP
Dawniell Zavala (SBN: 253130)
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994

Phone: (415) 268-2000
Fax: (415) 268-1999

ATTORNEYS (IF KNOWN)

E-filing HRL ADR

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant

3. Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR (For Diversity Cases Only))

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury	<input type="checkbox"/> 422 Appeal	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement Judgment	<input type="checkbox"/> 330 Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 21 USC 881	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 12 USC 3410
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 511 Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 405(g))	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 445 Amer w/disab - Empl	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 865 RSI (405(g))	
	<input type="checkbox"/> 446 Amer w/disab - Other	<input type="checkbox"/> 555 Prison Condition		
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 790 Other Labor	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
			<input type="checkbox"/> 791 Empl. Ret. Inc.	<input type="checkbox"/> 871 IRS—Third Party
			Security Act	<input type="checkbox"/> 26 USC 7609

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

17 U.S.C. § 501 et seq. — copyright infringement

VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION COMPLAINT UNDER F.R.C.P. 23: Statutory damages; injunction CHECK YES only if demanded in complaint YES NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE

DATE August 21, 2008

SIGNATURE OF ATTORNEY OF RECORD

